

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the matter of:

Prodigy Surface Tech, Inc.
807 Aldo Avenue
Santa Clara, California 95054

ID No. CAD 982 503 179
Respondent.

Docket No. HWCA20040430

CONSENT ORDER (CYANIDE WASTE)

Health and Safety Code Section 25187

The State Department of Toxic Substances Control (Department) and Prodigy Surface Tech, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1. Section 25187 of the Health and Safety Code authorizes the Department to issue an enforcement order when the Department determines that there may be a violation or threatened violation of the Health and Safety Code or any regulation adopted pursuant thereto. Onsite treatment of cyanide wastes without a permit, consent order, or other grant of authorization from the Department is a violation of Health and Safety Code section 25201.

2. The Department intends to establish appropriate grants of authorization for cyanide wastes as part of its rulemaking process.

3. The Respondent has submitted notification under Permit by Rule (PBR).

4. Respondent waives any right to a hearing in this matter.

5. This Order shall constitute full settlement of the alleged violation, but does not limit the Department from taking appropriate enforcement action concerning other violations. By entering into this Consent Order, however, Respondent makes no admission that any violation occurred.

RESPONDENT'S CURRENT ACTIVITIES

6. Unauthorized Non-eligible Onsite Treatment Activity. The Respondent's current disputed activity is the use of ion exchange to remove cyanide from spent rinse water (hazardous aqueous waste) containing up to 50 parts per million cyanide, and the use of ultraviolet radiation to oxidize residual cyanide remaining in the spent rinse water after ion exchange. The Respondent conducts current disputed activity at 807 Aldo Avenue in Santa Clara, California.

6.1. Authorized activities: Respondent is authorized to treat hazardous metal-bearing and corrosive wastes under Conditional Authorization.

SCHEDULE FOR COMPLIANCE

7. Respondent shall comply with the following:

7.1. Respondent may continue operating activities described in paragraph 6, to the extent authorized under this Order.

7.1.1. Respondent shall not, at any time, conduct cyanide destruction on any nonaqueous (solid, semisolid, or sludge-like) hazardous cyanide-bearing waste.

7.1.2. Respondent shall not, at any time, conduct cyanide treatment on any hazardous waste having a total cyanide concentration greater than 50 parts per million.

7.1.3. Respondent shall not treat more than 8,400 gallons of aqueous waste containing cyanide in any single calendar month.

7.2. When PBR regulations are promulgated, or a specific form of authorization is issued to Respondent, for the activities authorized in paragraph 7.1, Respondent shall immediately comply with all the requirements of such PBR regulations or authorization for these activities and this Order shall cease to have any force or effect.

7.2.1. If the Department later notifies Respondent that Respondent's activity authorized pursuant to paragraph 7.1 will not be addressed under PBR or other forms of authorization, within 60 days the Respondent shall cease treatment of wastes containing cyanide and complete closure of the unit(s), or apply for a full permit following the requirements of California Code of Regulations (Cal. Code Regs.), title 22, division 4.5, chapter 20. Closure shall be conducted in accordance with interim status facility closure requirements specified in Cal. Code Regs., tit. 22, div. 4.5, ch. 15, art. 7. If Respondent chooses to apply for a permit, Respondent shall comply with the conditions of this Order until a permit decision is made.

7.2.2. If Respondent fails to comply with this Order, Respondent shall cease operation of hazardous waste facility activities authorized pursuant to paragraph 7.1 and begin closure of those activities. Closure shall be conducted in accordance with interim status facility closure requirements specified in Cal. Code Regs., tit. 22, div. 4.5, ch. 15, art. 7.

7.2.3. Respondent shall immediately begin work to achieve compliance with requirements applicable to a Permit By Rule facility, as detailed in Cal. Code Regs., tit. 22, div. 4.5, ch. 45.

7.2.4. Respondent shall achieve compliance with the requirements listed in paragraph 7.2.3 within 10 days of the effective date of this Order, unless a different date is specified below.

7.2.5. **Identification Number.** If Respondent does not have an Identification Number as required by Cal. Code Regs., tit. 22, § 66265.11, Respondent shall apply for an Identification Number within 10 days of the effective date of this Order.

7.2.6. **Waste Analysis.** (a) Within 60 days of the effective date of this Order, Respondent shall develop and implement a written waste analysis plan meeting the requirements of Cal. Code Regs., tit. 22, § 66265.13.

(b) Respondent shall comply with Cal. Code Regs., tit. 22, § 66265.13, once a waste analysis plan is developed.

7.2.7. **Security.** Respondent shall comply with Cal. Code Regs., tit. 22, § 66265.14, within 10 days of the effective date of this Order.

7.2.8. **Inspections.** (a) Within 10 days of the effective date of this Order, Respondent shall develop and implement a written inspection schedule meeting the requirements of Cal. Code Regs., tit. 22, § 66265.15.

(b) Respondent shall comply with Cal. Code Regs., tit. 22, § 66265.15, once an inspection schedule is developed.

7.2.9. **Personnel Training.** Respondent shall implement a training program meeting the requirements of Cal. Code Regs., tit. 22, § 66265.16, for facility personnel within 10 days of the effective date of this Order. All personnel shall complete the required training within 30 days of the effective date of this Order.

7.2.10. **Ignitable, Reactive or Incompatible Wastes.** Respondent shall comply with Cal. Code Regs., tit. 22, §§ 66265.17, 66265.176 - 66265.177, and 66265.198 - 66265.199, beginning on the day after the effective date of this Order.

7.2.11. **Operating Record.** Respondent shall comply with the requirements of Cal. Code Regs., tit. 22, § 67450.3, subd. (c)(9)(D), beginning on the day after the effective date of this Order. Within 30 days of the effective date of this Order, Respondent shall compile all existing records of previous activities that would have

been required to be kept under this section, and incorporate those records into the current operating record, to the extent possible.

7.2.12. Closure. Within 60 days of the effective date of this Order, Respondent shall prepare a written closure plan that includes the information specified in Cal. Code Regs., tit. 22, § 67450.3, subd. (c)(11)(B), and shall maintain and make the plan available as specified in Cal. Code Regs., tit. 22, § 67450.3, subd. (c)(8).

7.2.13. Closure Cost Estimate. Respondent shall prepare and maintain a written closure cost estimate for the facility meeting the requirements of Cal. Code Regs., tit. 22, § 67450.13, subd. (a)(1) - (3), within 60 days of the effective date of this Order.

7.2.14. Closure Cost Assurances. Respondent shall establish and demonstrate to the Department financial assurance for closure in the amount of the closure cost estimate developed pursuant to paragraph 7.2.14, as required under Cal. Code Regs., tit. 22, § 67450.13, subd. (a)(5), within 60 days of the effective date of this Order.

7.2.15. Corrective Action Requirement. Respondent shall comply with the corrective action requirements of Health and Safety Code section 25200.14. This Order does not preclude the Department from taking enforcement action including assessment of penalties for failure to submit the Phase I Environmental Assessment or failure to comply with other corrective action requirements.

7.2.16. Facility Modifications. All facility modifications for activities authorized under paragraph 7.1 must be approved by the Department prior to any such changes.

7.3. **Submittals.** All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

Mr. Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Mr. Tony Pacheco, Deputy Director
Santa Clara County Environmental Health
1555 Berger Drive, Suite 300
San Jose, California 95112-2716

7.4. **Communications.** All approvals and decisions of the Department made regarding such submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Statewide Compliance Division, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

7.5. **Department Review and Approval.** If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may: (a) modify the document as deemed necessary and approve the document as modified; or (b) return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

7.6. **Compliance with Applicable Laws.** Respondent shall carry out this Order in compliance with all local, State, and Federal requirements, including, but not limited to, requirements to obtain permits and to assure worker safety, except as specifically provided in this Order.

7.7. **Endangerment during Implementation.** In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

7.8. **Liability.** Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment. By agreeing to this Order, the Department does not waive the right to take further enforcement actions.

7.9. **Site Access.** Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all

property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

7.10. Sampling, Data, and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

7.11. Government Liabilities. The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 7.16 in carrying out activities

pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

7.12. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

7.13 Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

7.14. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

7.15. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

7.16. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department or any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Order.

7.17. **Compliance with Waste Discharge Requirements.** Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

7.18. **Integration.** This Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order or agreed by the parties.

ADMINISTRATIVE COSTS

8. Within 30 days of the effective date of this Order, Respondent shall pay the Department for its administrative costs in implementing this Order. The "administrative costs" is the amount the facility would pay in fees assessed under PBR. Pursuant to Health and Safety Code section 25205.14, subdivision(a), the current annual PBR fee is \$1,162 per facility. However, this fee will be assessed as a one-time fee, and Respondent will not be required to remit this fee on an annual basis. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and the Docket Number, as shown in the heading of this case. Within 30 days of the date this Order is fully executed, Respondent shall deliver the administrative cost payment, together with the attached Payment Voucher, to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st Floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

9. **Effective Date.** This Order is effective on the date it is signed by the Department.

Dated: March 30, 2004

Original signed by
Signature of Respondent's Representative

Mark Danitschek, C.O.O.
Typed or Printed Name and Title of
Respondent's Representative

Dated: April 7, 2004

Original signed by
Mr. Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control